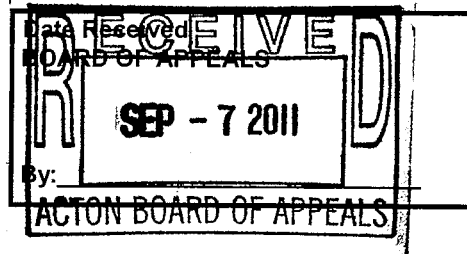


Town of Acton  
Massachusetts

TOWN CLERK, ACTON

Board of Appeals  
(Form 1)  
Petition for Review



September 6 20 11  
(See (1) Below)

I/We hereby petition the Board of Appeals for a public hearing under Section 11.1.1 of the Zoning By-law to review (a) the refusal of the Zoning Enforcement Officer to grant a permit under Section 8.3.6 of the Zoning By-law to allow: (b) the refusal of the Zoning Enforcement Officer to enforce the provisions of Section \_\_\_\_\_ of the Zoning By-law as follows: (Strike out inapplicable language)

See attached letter dated Sept. 6, 2011

Date of Zoning  
Enforcement Officer's Action \_\_\_\_\_

- (1) Petition must be filed within 30 days  
of refusal date with copy of decision  
or order attached.

OFFICE USE ONLY

Seven copies of petition? ☒

Location Map? ☒

Plot plans? ☒

Additional briefs? ☒

List of abutters and  
other interested  
parties? ☒

Fee - \$100.00/1-25 abutters?  
\$125.00/26 + abutters? \_\_\_\_\_

Next Hearing Date? \_\_\_\_\_ # \_\_\_\_\_

Respectfully submitted,

Signed [Signature]  
(Petitioner)

Name R. Douglas Shaw GS Holdings LLC

Address 50 Pope Road, Acton MA 01720

Phone # 978 375 1434

Signed [Signature]  
(Owner of Record)

Name GS Holdings LLC

Address 550 Newtown Rd 1

Littleton MA 01460

Phone # \_\_\_\_\_

The Board of Appeals has the power and duty to hear and decide appeals (Section 11.1.1) from a decision of the Zoning Enforcement Officer

Revised 1/4/10



RECEIVED  
SEP \_ 9 2011

TOWN CLERK, ACTON

**Board of Appeals**

**NOTICE OF PUBLIC HEARING**

**The Board of Appeals will hold a Public Hearing on Monday, October 3, at 7:30 PM  
in Room 126 of the Town Hall.**

**on the following petition:**

**Hearing #11-12**

**R. Douglas Shaw, GS Holdings LLC for a PETITION**

**FOR REVIEW to review the refusal of the Zoning**

**Enforcement Officer to allow a building permit to**

**construct a large addition around an existing single**

**family dwelling per Zoning Bylaw Section 8.3.6. The**

**subject property is located at 50 Pope Road.**

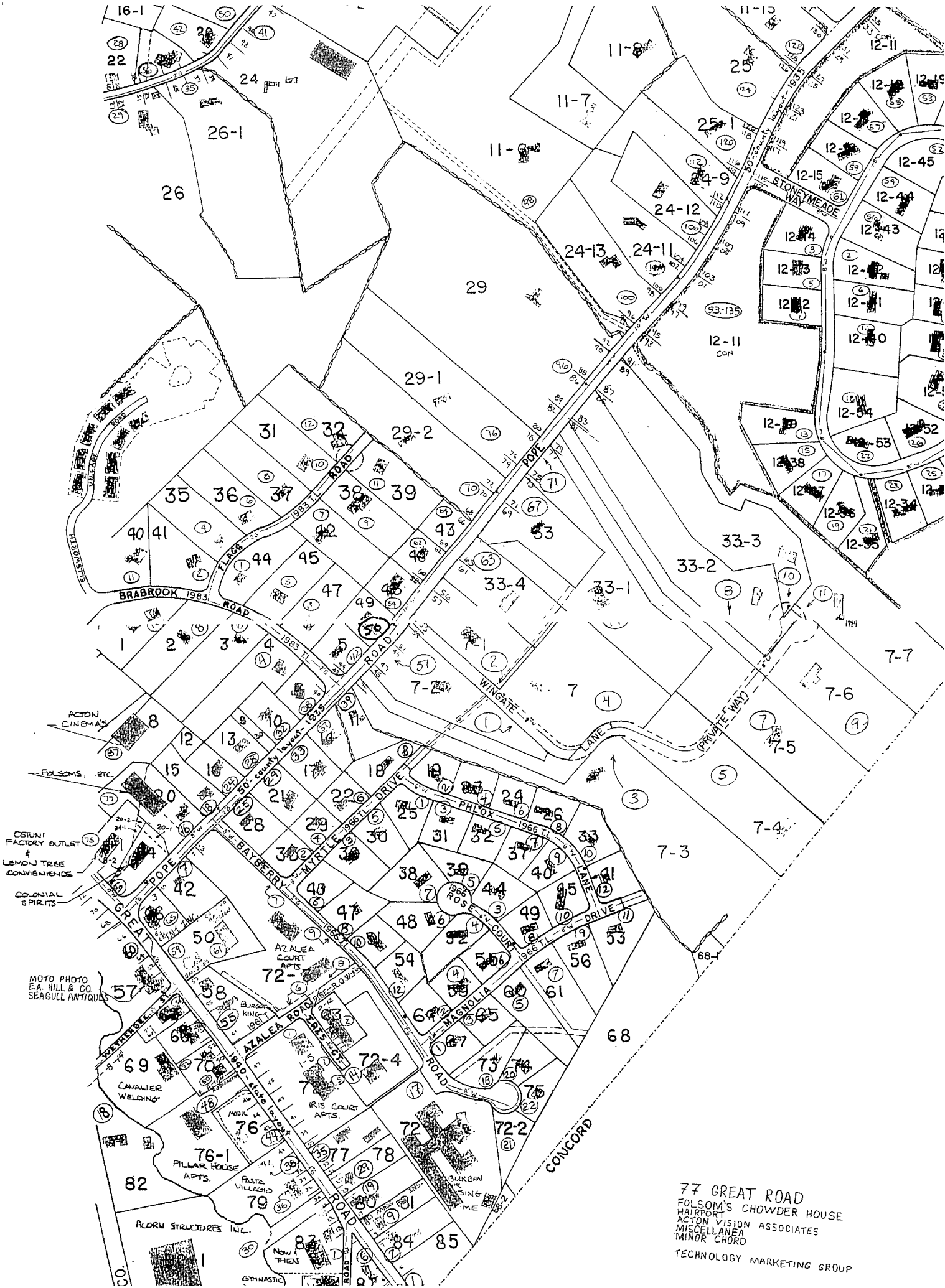
**Map F-5/Parcel 49.**

**Petitioner must be present, or send authorized representative**

**BOARD OF APPEALS**

**Ken Kozik**

**Chairman**



77 GREAT ROAD  
FOLSOM'S CHOWDER HOUSE  
HAIRPORT  
ACTION VISION ASSOCIATES  
MISCELLANEA  
MINOR CHORD  
TECHNOLOGY MARKETING GROUP



**Town of Acton**  
472 Main Street  
Acton, MA 01720  
Telephone (978) 929-6621  
Fax (978) 929-6340

Brian McMullen  
Assistant Assessor

Parcel Location 50 Pope Road  
Parcel I.D.: F5-49

Location	Parcel ID	Owner	Co-Owner	Mailing Address	Address 2	City	ST	Zip
63 POPE RD	F5-33-4	MIAO ADAM X	WU LINING	63 POPE RD		ACTON	MA	01720
9 FLAGG RD	F5-38	BRANDON ROBERT J TRUSTEE	BRANDON ERNA A TRUSTEE	9 FLAGG RD		ACTON	MA	01720
11 FLAGG RD	F5-39	SCHAFER BERT J ET UX TRUSTEES	SCHAFER ALICE L INV TRUST	11 FLAGG RD		ACTON	MA	01720
7 FLAGG RD	F5-42	FOLLEY RICHARD D	JEAN FLOYD	7 FLAGG RD		ACTON	MA	01720
POPE RD	F5-43	FERRARI BARBARA		62 POPE RD		ACTON	MA	01720
1 FLAGG RD	F5-44	ROSECAN STEPHEN M	ROSECAN MILENA B	1 FLAGG RD		ACTON	MA	01720
5 BRAEBROOK RD	F5-45	LEMIRE THOMAS M	LEMIRE ELIZABETH G	5 BRAEBROOK RD		ACTON	MA	01720
62 POPE RD	F5-46	FERRARI BARBARA		62 POPE RD		ACTON	MA	01720
3 BRAEBROOK RD	F5-47	HOCHARD THERESA	ROBERT	3 BRAEBROOK		ACTON	MA	01720
54 POPE RD	F5-48	NADEAU EARL L		54 POPE ROAD		ACTON	MA	01720
6 BRAEBROOK RD	G5-3	CHABAD CENTER OF ACTON INC		6 BRAEBROOK RD		ACTON	MA	01720
4 BRAEBROOK RD	G5-4	CHAPIN JR HENRY T	CHAPIN LINDA R	4 BRAEBROOK ROAD		ACTON	MA	01720
42 POPE RD	G5-5	SPENCE MARY R		42 POPE ROAD		ACTON	MA	01720
38 POPE RD	G5-6	CHEEVER RICHARD N TRUSTEE	CHEEVER MARY JANE TRUSTEE	RICHARD N CHEEVER TRUST 38 POPE ROAD		ACTON	MA	01720
4 WINGATE LN	G5-7	SIDEROWICZ JOSEPH A	SIDEROWICZ TARA C	4 WINGATE LN		ACTON	MA	01720
2 WINGATE LN	G5-7-1	MULLARKEY VINCENT J	MULLARKEY KATHLEEN M	2 WINGATE LANE		ACTON	MA	01720
1 WINGATE LN	G5-7-2	BLANEY JOHN A	BLANEY SUZANNE I	1 WINGATE LN		ACTON	MA	01720
3 WINGATE LN	G5-7-3	CHINITZ JONATHAN E	CHINITZ JANET F	3 WINGATE LN		ACTON	MA	01720
39 POPE RD	G5-11	HOLLEY CAROL J		39 POPE RD		ACTON	MA	01720
37 POPE RD	G5-14	MOVSESAN RAFIK G.	MOVSESAN HELEN T	37 POPE RD		ACTON	MA	01720

Abutters and owners of land directly opposite on any public or private street or way and abutters to the abutters within three hundred feet of the property line all as they appear on the most recent applicable tax list.

HEARING NOTICES FOR ALL SPECIAL PERMITS MUST BE SENT TO THE  
PLANNING BOARD, TOWN HALL IN THE FOLLOWING TOWNS:

Boxborough, MA 01729 Maynard, MA 01754 Concord, MA 01742 Littleton, MA 01460  
Carlisle, MA 01741 Stow, MA 01775 Westford, MA 01886 Sudbury, MA 01776

*Daryl Powell*  
Daryl Powell  
Property Lister  
Acton Assessors Office  
7/21/2011



**TOWN OF ACTON**

472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 929-6631  
Fax (978) 929-6340  
planning@acton-ma.gov  
www.acton-ma.gov

**Zoning Enforcement Officer**

September 6, 2011

GS Holdings, LLC.  
c/o Mr. Douglas Shaw  
550 Newton Road  
Littleton, MA 01460

Subject: 50 Pope Road – Construct Addition to Existing Single Family Residence  
(2<sup>nd</sup> Review Based Upon Revised Drawings)

Dear Mr. Shaw,

The Planning Department has re-reviewed your proposed building permit application based upon the latest plan revisions which you submitted and identify in a letter dated August 31, 2011. Unfortunately, even with the revisions you have proposed, the pending building permit application CAN NOT be approved at this time.

The pending building permit application is seeking approval to construct a large addition around an existing single family residential dwelling structure. According to information obtained from the Town of Acton Assessor's Field Card, the existing residential structure is a 1,142 square foot (living area only), 1 story Cape Cod home which was originally built in 1955. The existing dwelling has a building footprint of 34'-0" by 24'-0".

The subject property is located within an R-8 (Residential 8) Zoning District. Based upon the Table of Standard Dimensional Regulations set forth within Section 5 of the Town of Acton's Zoning Bylaw, the subject property is deemed to be a non-conforming lot. The reasons for which the property is deemed to be non-conforming are two-fold: 1) the property does not have the minimum required 80,000 square feet of lot area; and 2) the property does not have the minimum required 200'-0" of lot frontage. According to the Engineering Department's Property Index Cards, the subject property is 24,627 square feet in lot area and has only 166.07 feet of lot frontage.

Based upon the drawings submitted for building permit application review, the residential dwelling structure if constructed as currently proposed would result in the creation of a two-story, three (3) car garage home in excess of 3,100 square feet in size (basement excluded).

Section 8.3.6 of the Zoning Bylaw sets forth the requirements for the Replacement of Single Family Dwellings. Simply stated, if a structure exists on a non-conforming lot, that structure is permitted to be demolished, but the replacement structure CAN NOT exceed the Net Floor Area of the previous structure prior to its demolition. The footprint of the new dwelling structure is not restricted to having to match the previous dwelling's footprint, but the Net Floor Area's of past and proposed dwelling

structures must be the same, if not less. In addition, if approved, once the new structure is completed and a Certificate of Occupancy is issued by the Building Commissioner, a minimum of two years must elapse before any additions or new square footage is permitted to be added to the dwelling structure.

The complete section of the Bylaw pertaining to this issue is as follows:

- 8.3.6 Replacement of Single- and Two-Family Dwellings – A STRUCTURE in single family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for single family residential USE, or rebuilt for single family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; and a STRUCTURE in two-family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for two-family residential USE, or rebuilt for two-family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; in both cases subject to the following conditions and limitations:
- 8.3.6.1 The replacement STRUCTURE shall not exceed the FLOOR AREA RATIO on the LOT of the STRUCTURE that existed on the LOT before it was razed or damaged.
- 8.3.6.2 The replacement STRUCTURE shall meet all minimum yard and maximum height requirements of this Bylaw.
- 8.3.6.3 In the absence of architectural and plot plans for the existing structure to be razed, the FLOOR AREA RATIO shall be determined by using the information on record at the Town of Acton Assessor's office.
- 8.3.6.4 Additions to the replacement STRUCTURE may be made after two years following the date of initial occupancy of the replacement STRUCTURE, if otherwise permissible and subject to any permits and special permits that may be required.

Specifically, Town Meeting approved Section 8.3.6 based on the following Summary of the Warrant Article from Town Meeting:

The zoning bylaw currently allows the restoration of structures after fire, flood, or similar disaster on lots that are nonconforming due to insufficient frontage or area, either by right if the damage amounts to 50% or less of the structure's value, or by special permit if damage exceeds 50% of the value. **The zoning bylaw does not currently allow the intentional demolition and rebuilding of structures on such nonconforming lots. This article would change this for single and two-family homes on such lots.**

It would allow their tear-down and replacement in kind. Since 2000, the Board of Appeals heard six variance petitions to allow such replacements. The cases varied. Five variances were granted. The statutory criteria for variances – hardship due to soil conditions, shape or topography – do not strictly apply to replacements after demolitions. Insufficient frontage or area by themselves cannot be considered hardship. This article would remove the zoning bylaw's barrier against demolition and replacement of single- and two-family residences on nonconforming lots, some of which may fall into disrepair after years of estate ownership and abandonment, become an eyesore in the neighborhood, pose a safety hazard, and may be cheaper to replace than to renovate. **As proposed in the article, a replacement residence would be allowed by right if it complies with applicable setback and height requirements of the zoning bylaw and, as a barrier against speculative tear-downs, if it initially is not larger than the residence it replaces.** Additions can be made later on by a home owner, just like additions can be made to existing homes on non-conforming lots. Looking only at smaller single family homes (less than 1,500 square feet in living area) as the more likely candidates for potential speculative replacements, and evaluating their lots only for area, the Planning Department found 237

such small homes on undersized lots. This represents approximately 4% of Acton's single family housing stock.

This article would also allow by right the replacement in kind of single and two-family homes after fire or natural disaster except flood, regardless of the degree of damage that occurred. (Emphasis added)

In this particular instance, a total demolition of the existing residential dwelling and the construction of a completely new replacement home with a significantly larger footprint and overall square footage is not what is currently being proposed. As mentioned previously, the proposed building permit seeks to completely gut and remove the roof of the existing single story dwelling and construct a significantly substantial 2-story addition around the preserved first floor and existing home. It is unclear from the drawings currently submitted just how much and what exactly is going to be preserved of the existing dwelling.

While I acknowledge that Section 8.3.6 of the Zoning Bylaw does not strictly apply in this particular case, I do believe however, that the end result of the pending building permit application circumvents the underlying intention of Zoning Bylaw Section 8.3.6. Therefore, based upon the above noted information along with my belief of the underlying intention, I am determining herewith that the proposed building permit seeking to significantly increase the overall mass and size of the existing dwelling which is to be located at 50 Pope Road, Acton, MA does not comply with the Acton Zoning Bylaw. Accordingly, I will not sign-off on or approve any building permits.

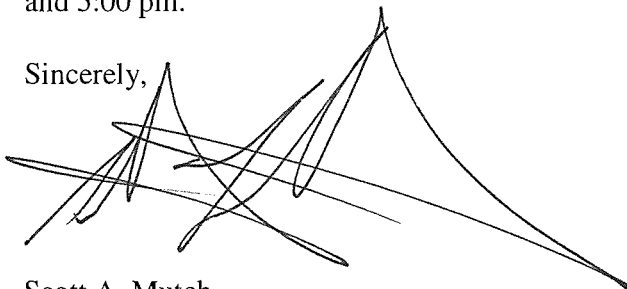
You may, of course, modify your building plans to conform to the requirements and concerns listed in this memo. I would be happy to review such plans with you at any point. In addition, if you disagree with and wish to seek relief from any of the determinations made in this memo, you may pursue either of or both of the following two avenues (at your discretion):

1. Submit an application within 30 days of this letter for a Petition for Review to the Zoning Board of Appeals challenging the administrative decisions of the Zoning Enforcement Officer regarding the interpretations of the Zoning Bylaw included in this memo, or;
2. Seek a finding from the Zoning Board of Appeals that the proposed dwelling may be built upon the non-conforming lot despite Section 8.3.6 pursuant to M.G.L. c. 40A, § 6, first paragraph.

Should you wish to exercise either one of these options, Zoning Board of Appeals information can be obtained by contacting Cheryl Frazier, Secretary to the Zoning Board of Appeals at (978) 929-6633 during regular business hours.

If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 929-6631, Monday through Friday (except for holidays) between the hours of 8:00 am and 5:00 pm.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott A. Mutch', written over a series of horizontal lines that serve as a guide.

Scott A. Mutch  
Zoning Enforcement Officer & Assistant Town Planner



**Zoning Enforcement Officer**

**TOWN OF ACTON**

472 Main Street  
Acton, Massachusetts 01720  
Telephone (978) 929-6631  
Fax (978) 929-6340  
planning@acton-ma.gov  
www.acton-ma.gov

July 22, 2011

GS Holdings, LLC.  
c/o Mr. Douglas Shaw  
550 Newton Road  
Littleton, MA 01460

Subject: 50 Pope Road – Construct Addition to Existing Single Family Residence

Dear Mr. Shaw,

The Planning Department has reviewed your proposed building permit application and CAN NOT approve it at this time. The pending building permit application is seeking approval to construct a large addition around an existing single family residential dwelling structure. According to information obtained from the Town of Acton Assessor's Field Card, the existing residential structure is a 1,142 square foot (living area only), 1 story Cape Cod home which was originally built in 1955. The existing dwelling has a building footprint of 34'-0" by 24'-0".

The subject property is located within an R-8 (Residential 8) Zoning District. Based upon the Table of Standard Dimensional Regulations set forth within Section 5 of the Town of Acton's Zoning Bylaw, the subject property is deemed to be a non-conforming lot. The reasons for which the property is deemed to be non-conforming are two-fold: 1) the property does not have the minimum required 80,000 square feet of lot area; and 2) the property does not have the minimum required 200'-0" of lot frontage. According to the Engineering Department's Property Index Cards, the subject property is 24,627 square feet in lot area and has only 166.07 feet of lot frontage.

Based upon the drawings submitted for building permit application review, the residential dwelling structure if constructed as currently proposed would result in the creation of a two-story, three (3) car garage home in excess of 3,100 square feet in size (basement excluded).

Section 8.3.6 of the Zoning Bylaw sets forth the requirements for the Replacement of Single Family Dwellings. Simply stated, if a structure exists on a non-conforming lot, that structure is permitted to be demolished, but the replacement structure CAN NOT exceed the Net Floor Area of the previous structure prior to its demolition. The footprint of the new dwelling structure is not restricted to having to match the previous dwelling's footprint, but the Net Floor Area's of past and proposed dwelling structures must be the same, if not less. In addition, if approved, once the new structure is completed and a Certificate of Occupancy is issued by the Building Commissioner, a minimum of two years must elapse before any additions or new square footage is permitted to be added to the dwelling structure.



The complete section of the Bylaw pertaining to this issue is as follows:

- 8.3.6 Replacement of Single- and Two-Family Dwellings – A STRUCTURE in single family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for single family residential USE, or rebuilt for single family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; and a STRUCTURE in two-family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for two-family residential USE, or rebuilt for two-family residential USE after damage from fire or natural disaster except flood, regardless of the degree of damage; in both cases subject to the following conditions and limitations:
- 8.3.6.1 The replacement STRUCTURE shall not exceed the FLOOR AREA RATIO on the LOT of the STRUCTURE that existed on the LOT before it was razed or damaged.
- 8.3.6.2 The replacement STRUCTURE shall meet all minimum yard and maximum height requirements of this Bylaw.
- 8.3.6.3 In the absence of architectural and plot plans for the existing structure to be razed, the FLOOR AREA RATIO shall be determined by using the information on record at the Town of Acton Assessor's office.
- 8.3.6.4 Additions to the replacement STRUCTURE may be made after two years following the date of initial occupancy of the replacement STRUCTURE, if otherwise permissible and subject to any permits and special permits that may be required.

Specifically, Town Meeting approved Section 8.3.6 based on the following Summary of the Warrant Article from Town Meeting:

The zoning bylaw currently allows the restoration of structures after fire, flood, or similar disaster on lots that are nonconforming due to insufficient frontage or area, either by right if the damage amounts to 50% or less of the structure's value, or by special permit if damage exceeds 50% of the value. **The zoning bylaw does not currently allow the intentional demolition and rebuilding of structures on such nonconforming lots. This article would change this for single and two-family homes on such lots.**

It would allow their tear-down and replacement in kind. Since 2000, the Board of Appeals heard six variance petitions to allow such replacements. The cases varied. Five variances were granted. The statutory criteria for variances – hardship due to soil conditions, shape or topography – do not strictly apply to replacements after demolitions. Insufficient frontage or area by themselves cannot be considered hardship. This article would remove the zoning bylaw's barrier against demolition and replacement of single- and two-family residences on nonconforming lots, some of which may fall into disrepair after years of estate ownership and abandonment, become an eyesore in the neighborhood, pose a safety hazard, and may be cheaper to replace than to renovate. **As proposed in the article, a replacement residence would be allowed by right if it complies with applicable setback and height requirements of the zoning bylaw and, as a barrier against speculative tear-downs, if it initially is not larger than the residence it replaces.** Additions can be made later on by a home owner, just like additions can be made to existing homes on non-conforming lots. Looking only at smaller single family homes (less than 1,500 square feet in living area) as the more likely candidates for potential speculative replacements, and evaluating their lots only for area, the Planning Department found 237 such small homes on undersized lots. This represents approximately 4% of Acton's single family housing stock.

This article would also allow by right the replacement in kind of single and two-family homes after fire or natural disaster except flood, regardless of the degree of damage that occurred. (Emphasis added)

In this particular instance, a total demolition of the existing residential dwelling and the construction of a completely new replacement home with a significantly larger footprint and overall square footage is not what is currently being proposed. As mentioned previously, the proposed building permit seeks to completely gut and remove the roof of the existing single story dwelling and construct a significantly substantial 2-story addition around the preserved first floor and existing home. It is unclear from the drawings currently submitted just how much and what exactly is going to be preserved of the existing dwelling.

While I acknowledge that Section 8.3.6 of the Zoning Bylaw does not strictly apply in this particular case, I do believe however, that the end result of the pending building permit application circumvents the underlying intention of Zoning Bylaw Section 8.3.6. Therefore, based upon the above noted information along with my belief of the underlying intention, I am determining herewith that the proposed building permit seeking to significantly increase the overall mass and size the existing dwelling which is to be located at 50 Pope Road, Acton, MA does not comply with the Acton Zoning Bylaw. Accordingly, I will not sign-off on or approve any building permits.

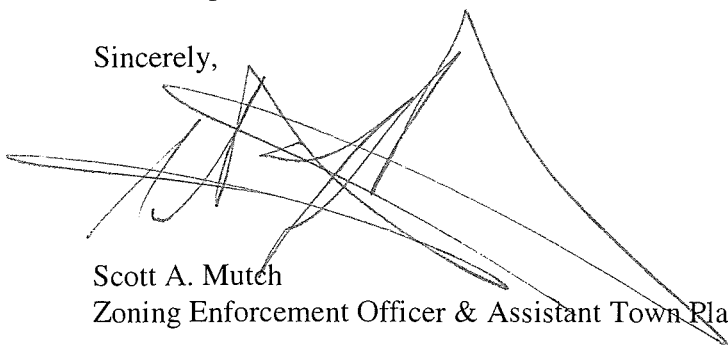
You may, of course, modify your building plans to conform to the requirements and concerns listed in this memo. I would be happy to review such plans with you at any point. In addition, if you disagree with and wish to seek relief from any of the determinations made in this memo, you may pursue either of or both of the following two avenues (at your discretion):

1. Submit an application for a Petition for Review to the Zoning Board of Appeals challenging the administrative decisions of the Zoning Enforcement Officer regarding the interpretations of the Zoning Bylaw included in this memo, or;
2. Seek a finding from the Zoning Board of Appeals that the proposed dwelling may be built upon the non-conforming lot despite Section 8.3.6 pursuant to M.G.L. c. 40A, § 6, first paragraph.

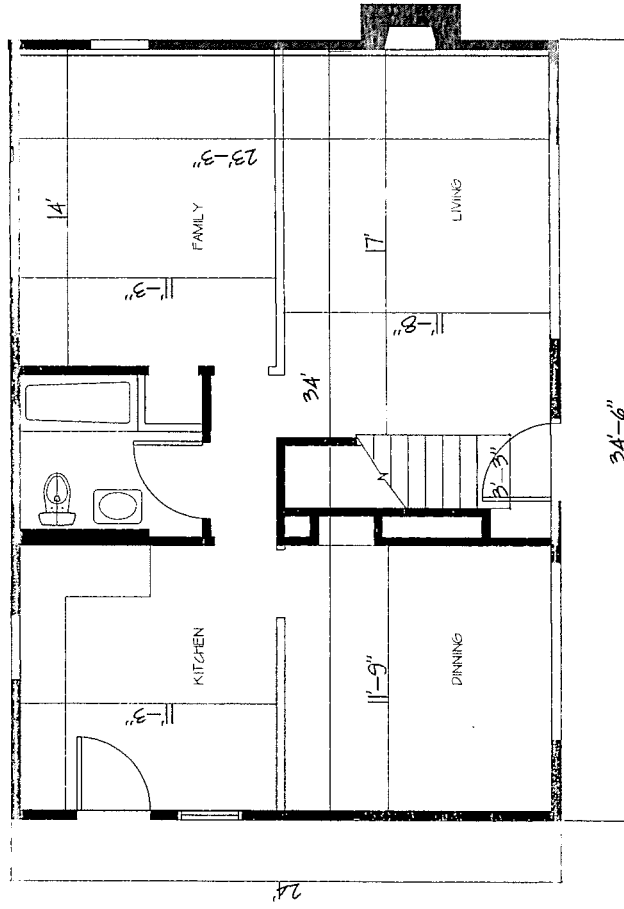
Should you wish to exercise either one of these options, Zoning Board of Appeals information can be obtained by contacting Cheryl Frazier, Secretary to the Zoning Board of Appeals at (978) 929-6633 during regular business hours.

If you have any questions, comments or concerns regarding this matter, please feel free to contact our office at (978) 929-6631, Monday through Friday (except for holidays) between the hours of 8:00 am and 5:00 pm.

Sincerely,

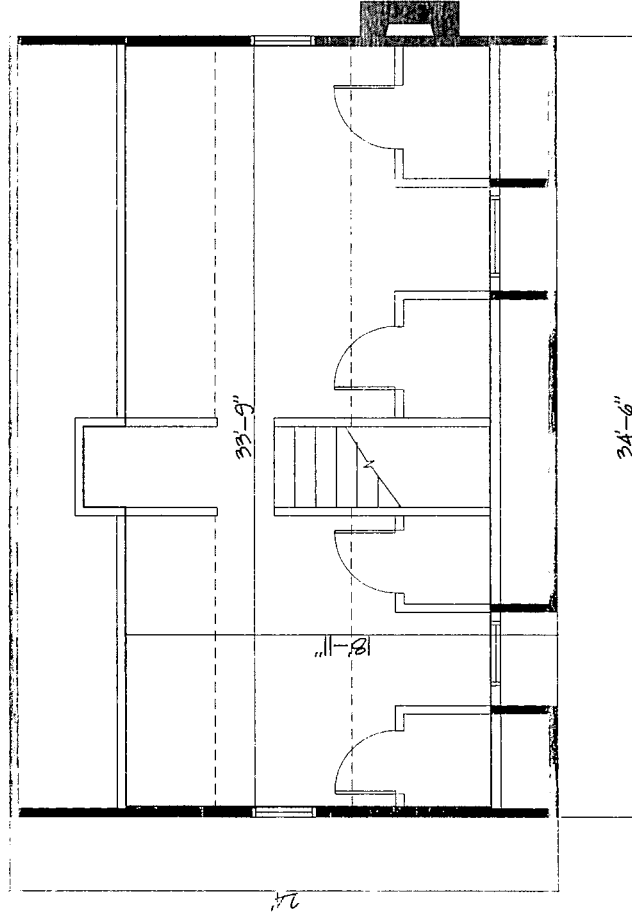
A large, stylized handwritten signature in black ink, appearing to read 'Scott A. Mutch', is written over the typed name and title.

Scott A. Mutch  
Zoning Enforcement Officer & Assistant Town Planner



EXISTING - 1 ST FLOOR  
 Scale: 3/8" = 1'-0"

FIRST FLOOR - 775 SF  
 SECOND FLOOR - 557 SF  
 TOTAL SF 1332 SF



EXISTING - 2 ST FLOOR  
 Scale: 3/8" = 1'-0"